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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,580	02/08/2002	Janos Bodor	F7589(V)	1805

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

SPIVACK, PHYLLIS G

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 09/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/072,580

Applicant(s)

Bodor et al.

Examiner
Phyllis G. Spivack

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 12, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action:
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9 6) ☐ Other:

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An Information Disclosure Statement filed August 27, 2003, Paper No. 9, is acknowledged. The references have been reviewed to the extent each is a proper citation on a U.S. patent. Co-pending application S.N. 10/174146 has not yet received a First Action on the merits and is not available to the Examiner.

An Amendment filed June 12, 2003, Paper No. 8, is further acknowledged. Claim 2 is canceled. Claims 1 and 3-10 remain under consideration.

In the last Office Action claims 1-10 were rejected under 35 U.S.C. 112, second paragraph, as lacking clarity with respect to the amount of statins in claims 1 and 3.

Applicants argue the amounts given are relative to the total weight of the food product.

Applicants' argument is persuasive and the rejection of record under 35 U.S.C. 112, second paragraph, is withdrawn.

Claims 1-8 were rejected in the last Office Action under 35 U.S.C. 103 as being unpatentable over Hoie, L.H. WO 97/31546. It was asserted Hoie teaches food products comprising more than 5 gm of soy protein optionally in combination with a statin.

Applicants argue there is no teaching in Hoie concerning fermented soy and that a soy protein having an altered % of genistein relative to soy protein isolate should be used.

It is noted there is no requirement for a fermented soy ingredient in claim 9.

Soybean isoflavones as genistein are known in the prior art to have cholesterol-lowering effects. Further, food products where flavonoids are combined with a statin are known. In view of Hoie's teaching, one skilled in the food art would have been motivated to combine a fermented

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soy protein as miso or tofu, in particular, to reduce blood lipid levels because each is a universally accepted food item.

The data disclosed in Table 3 on page 28 of the specification shows an increase in the concentration of the isoflavone genistein in fermented soy. This disclosure appears to be a critical element of the present invention. Accordingly, favorable consideration would be given to the inclusion of this critical element in the independent claims.

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 C FR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C FR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Phyllis Spivack at
telephone number 703-308-4703.

September 5, 2003

Phyllis Spivack

**PHYLLIS SPIVACK
PRIMARY EXAMINER**